

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,963

878

FRANKLIN D. RICHARDS,

Appellant

v.

UNITED STATES OF AMERICA.

Appellee

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 31 1964

Nathan J. Paulson
CLERK

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the district court erred in denying Defendant's Motion for a Judgment of Acquittal.

2. Whether the District Court erred in failure on its own motion to exclude hearsay testimony constituting the only evidence offered to establish one of the elements of both of the crimes of which appellant was convicted.

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Appeal from the United States District Court
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant, Franklin D. Richards, appeals from a judgment of conviction entered by the United States District Court for the District of Columbia on April 25, 1963, after a jury trial on March 13, 1963. The jury found appellant guilty of unauthorized use of vehicle 22 D.C.C. 2204 and Interstate Transportation of Stolen Motor Vehicle 18 U.S.C. 2312 as charged in a two count indictment.

On May 22, 1963, a notice of appeal was filed and the District Court on that day authorized appellant to proceed on appeal without prepayment of costs.

Jurisdiction of this Court is in 28 U.S.C. 1291.

STATUTES INVOLVED

The statutes involved are 22 D.C.C. 2204 which reads as follows:

Any person who without the consent of the owner, shall take, use, operate, or remove or cause to be taken, used, operated, or removed, from any garage, stable, or other building, or from any place on a public or private highway, from any street, lot, field, or enclosure or space, an automobile or motor vehicle, and shall operate or drive or cause the same to be operated or driven for his own profit, use, or purpose, shall be guilty of a violation of this section of the Criminal Code of the District of Columbia.

Also involved is 18 U.S.C. 2312 which reads as follows:

Whoever transports in interstate or foreign commerce motor vehicle or aircraft, knowing the same to have been stolen, shall be guilty of a violation of this Federal law.

STATEMENT OF CASE

Appellant, Franklin D. Richards, was indicted on two counts, Unauthorized Use of Vehicle 22 D.C.C. 2204 and Interstate Transportation of Stolen Motor Vehicle 18 U.S.C. 2312. The indictment defines the Vehicle as the property of Kathleen N. Lucey, and recites unauthorized use from October 1, 1962, to October 7, 1962, and interstate transportation on October 7, 1962. The Government called three witnesses to establish its case. The first was Kathleen N. Lucey, the alleged owner of the vehicle; the second, David Byrd; and the third, Albert Christiansen, Jr., the arresting police officer.

The witness, Miss Lucey, testified that on October 1, she was the owner of a 1961 Chevrolet Corvair, bearing Ohio License tags 19059C, and that she parked that vehicle on the parking lot behind the House Office Building; that at 7:00 o'clock in the evening she went back to the parking lot to get her car, found that it was there

but that the keys were missing. She then went back to her office to see if she could find her key and failing to do so she went home and got another set of keys, returning to the parking lot at 9:15. At that time she said, "There was no car." (Tr.5, 6 and 7). Miss Lucey also testified that she had not given defendant permission or consent to operate her automobile. On cross-examination, Miss Lucey was unable to identify defendant. The Government failed to offer evidence and hence failed to prove the identity of Miss Lucey's car by motor number, body style or even color. The Government failed to offer evidence and hence failed to prove that Miss Lucey owned an automobile on October 7, 1962, or that the car she owned on October 1, 1962, was out of her possession on October 7, 1962.

All of the testimony of the witness Byrd and Christiansen relates to events which took place on the 7th of October, 1962.

The Government asked the witness Byrd to identify the car in which, according to the Byrd testimony, the Appellant was seen on October 7, 1962. The witness described the car as a Corvair, white, 1961 model (Tr. 11) but the Government did not ask and hence did not prove the tag numbers on the automobile, the motor number or the body style.

The witness Christiansen, a Virginia State Police Officer, testified that he arrested the appellant in Fairfax County, Virginia on October 7, 1962, driving a 1961 Chevrolet Corvair bearing Maryland tags (Tr.16). The Government did not ask and hence did not establish the color, the motor number or the body style of the 1961 Corvair, although in a leading question, the prosecutor described the vehicle as a sedan. In response to a question, "Did you see anything else?" Officer Christiansen said,

"A little bit later, I found a set of Ohio plates." He was not asked and hence the Government failed to prove where these plates were found or what if any connection they may have had with identifying the 1961 Corvair in which appellant was found on October 7, 1962. Furthermore, these plates were not offered in evidence. Also Officer Christiansen said, "I called the Metropolitan Police Department to find out if the car was stolen and I talked to T. J. Harrigan of the Auto Squad and he told me that the car was stolen on October the 7th.* Later on that day, we received a teletype message verifying the fact that the car was stolen." (TR.17).

STATEMENT OF POINTS

1. The District Court erred in denying Defendant's Motion for a Judgment of Acquittal.

2. The District Court erred in failure on its own motion to exclude hearsay testimony constituting the only evidence offered to establish one of the elements of both of the crimes of which appellant was convicted.

ARGUMENT

It is submitted that the Government at the close of its case in chief, had totally failed to prove a prima facie case of either of the two offenses of which the appellant was accused. The Government has the burden in an unauthorized use case to establish the identity of the vehicle. See Karn v. United States, 158 F2d 568 (9th Cir. 1946). This is equally true in a case of Interstate Transportation of Stolen Motor Vehicle. See Cox v. United States, 96 F.2d 41 (8th Cir. 1938). It met neither burden.

*Emphasis added

It follows that the District Court erred in denying defendant's Motion for a Judgment of Acquittal.

Even if the Government had established the identification of the vehicle the defendant was entitled to a Judgment of Acquittal for another reason: the government failed to prove that the car in which the defendant was found at the time of arrest was not in his lawful possession. As pointed out above the Government wholly failed to identify the October 7th car as being Miss Lucey's but the Government didn't even prove that car to have stolen status (that is, from Miss Lucey or anyone else) save by the following flagrant hearsay which, in the interest of justice, should have been excluded by the District Court on its own motion.

Officer Christiansen said, "I called the Metropolitan Police Department to find out if the car was stolen and I talked to T. J. Harrigan of the Auto Squad and he told me that the car was stolen on October the 7th."*

"Later on that day, we received a teletype message verifying the fact that the car was stolen." (Tr.17)

There is no other proof, yet the District Court in denying the Motion for a Judgment of Acquittal said (Tr. 18 and 19):

"The Court will deny the motion. I think that when the Court considers the Government's evidence in the light of the presumption created by the possession of recently stolen property, the Government has made out a prima facie case"

It follows that for another reason the court erred in denying the motion for a directed verdict of acquittal.

*Emphasis added.

It is the appellant's position that the record subsequent to the denial of the Motion for a Judgment of Acquittal has no bearing on this appeal since, had the motion been granted, such evidence would not have been adduced.

CONCLUSION

For the foregoing reasons the judgment of conviction should be reversed and the cases remanded to the District Court with instructions to enter a Judgment of Acquittal.

Respectfully submitted,

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April 1964

BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,963

FRANKLIN D. RICHARDS, APPELLANT

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UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
ROBERT D. DEVLIN,
Assistant United States Attorneys.

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 6 1964

Nathan J. Paulson
CLERK

QUESTION PRESENTED

In the opinion of the appellee, the following question is presented:

Did the Government's evidence properly identify the automobile that appellant was arrested in as the same automobile that was owned by the complaining witness and which was taken without her permission from a parking lot in the District of Columbia, where the evidence showed that the automobile, had the same license plates concealed within it as were on it when it was stolen?

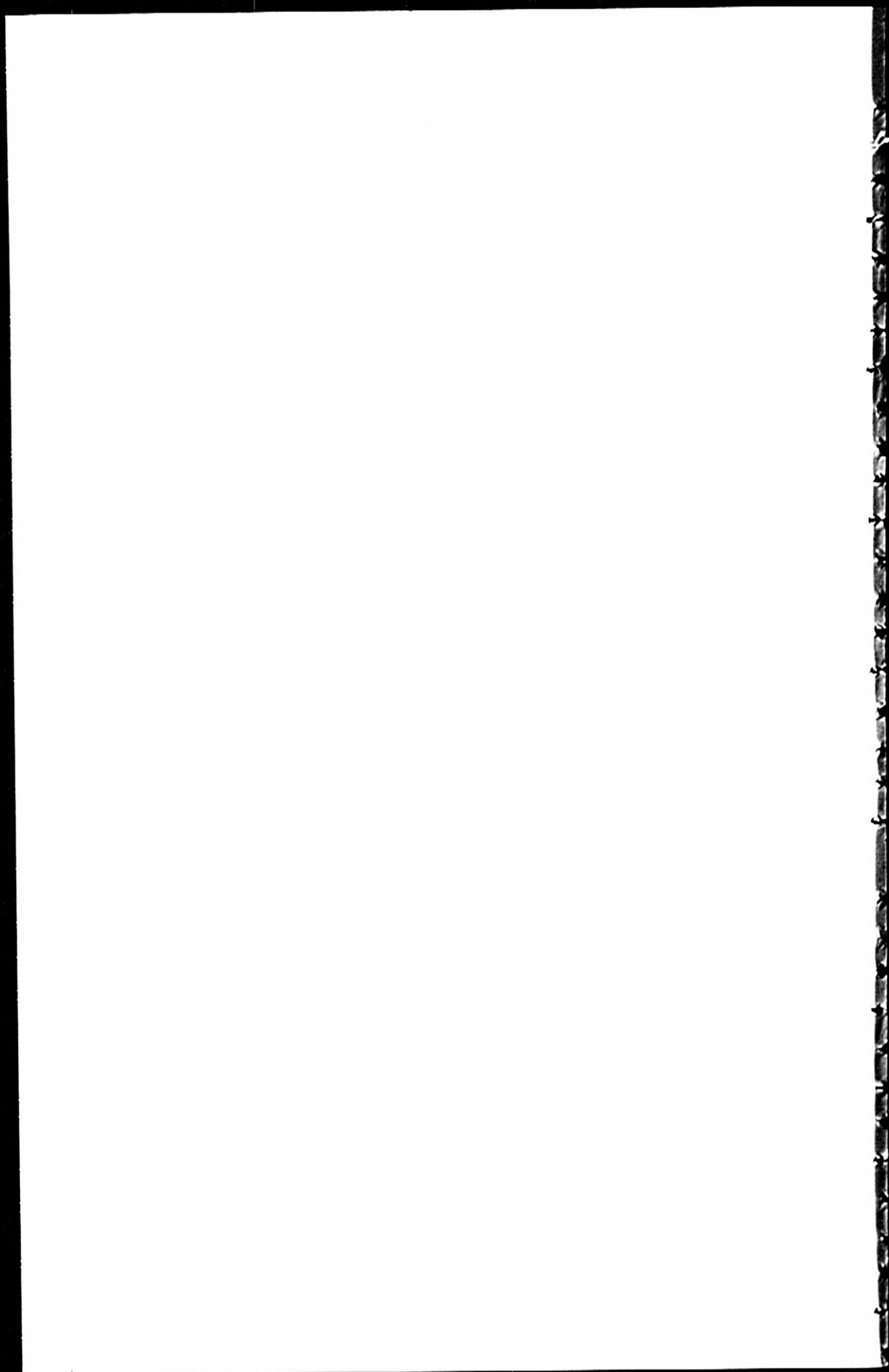
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* Cases chiefly relied upon are marked by asterisks.



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**Appeal from the United States District Court
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

A two count indictment filed November 5, 1962, charged appellant with Unauthorized Use of a Vehicle 22 DCC 2204 and Interstate Transportation of a stolen Motor Vehicle 18 USC 2312. After a trial by jury he was found guilty as charged. By a judgment and commitment filed on April 25, 1963, he was sentenced under the Federal Youth Correction Act.

On the morning of October 1, 1962 Kathleen M. Lucey drove her car to the House Office Building where she works (Tr. 5). She parked the car in the parking lot behind the House Office Building, at Second and C Streets, S.E. (Tr. 5). Since the parking lot was so crowded, for the convenience of the other people who also parked there, she left the keys in her car so it could be moved during the day. (Tr. 6). Miss Lucey described her car as a 1961 Chevrolet Corvair with Ohio license tags bearing the num-

ber 19059C (Tr. 5). After parking the car that morning she next saw her car when she left work around 7 p.m. When she got to her car, the keys were no longer in the ignition. Thinking that, perhaps, she had left her keys in her office she returned to look for them, to no avail. Being unable to find her keys she went home to get another set (Tr. 6). Around 9:15 p.m. Miss Lucey returned to get her car but it was not there (Tr. 7). She explained that she had never given appellant permission to use her car. On cross-examination she testified that appellant told her he took her car, but later she explained there were two individuals at the police station, appellant Richards and another individual named Johnson, and she could not now tell one from the other (Tr. 8).

David L. Byrd, a friend of appellant, saw him on October 7, 1962, riding in a white, 1961 Corvair car (Tr. 11). Appellant took Byrd for a ride, they crossed a bridge and drove into Virginia (Tr. 13 and 15).

Albert Christiansen, a Virginia State Police Officer, stopped appellant on Route 1 in Fairfax County, Virginia (Tr. 15). He was driving a 1961 Chevrolet Corvair (Tr. 16). The car had Maryland license plates (Tr. 16). The officer found a set of Ohio license plates in the car bearing the number 19059C (Tr. 17). Officer Christiansen contacted the Metropolitan Police Department and was informed the car was stolen. Later that day the Virginia police also received a teletype message verifying the fact that the car was stolen (Tr. 17). At the conclusion of the Government's case appellant moved for a judgment of acquittal. The motion was denied (Tr. 18).

Appellant Richards testified in his own behalf. He admitted driving the car and picking up his friend Byrd and going for a ride (Tr. 20). He also admitted that he was speeding around 60 or 70 miles an hour in Virginia and that he was stopped by a Virginia state police officer (Tr. 22 and 26). However, he denied stealing the car and testified that a friend by the name of Edward Johnson loaned him the car and showed him the registration for it (Tr. 20). Appellant did not have a driver's license

(Tr. 22). He was taken to the Fairfax police station where the police discovered the car was stolen.

At the conclusion of the court's charge to the jury no objections were made by either party.

STATUTES INVOLVED

Title 22, District of Columbia Code, Section 2204, provides:

Any person who without the consent of the owner, shall take, use, operate, or remove or cause to be taken, used, operated, or removed, from any garage, stable, or other building, or from any place on a public or private highway, from any street, lot, field, or enclosure or space, an automobile or motor vehicle, and shall operate or drive or cause the same to be operated or driven for his own profit, use, or purpose, shall be guilty of a violation of this section of the Criminal Code of the District of Columbia.

Title 18, United States Code, Section 2312, provides:

Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

SUMMARY OF ARGUMENT

Viewing the Government's evidence in its most favorable light, appellant's contention, that the automobile in question was not properly identified, is without merit. The evidence at trial revealed that the complainant parked her car on a parking lot in the District of Columbia. She described the car as a 1961 Chevrolet Corvair with Ohio license plate number 19059C. The car was removed from the lot without her permission. Thereafter, appellant was arrested in a 1961 Chevrolet Corvair and although the Ohio tags had been removed from the car they were found inside the car by the Virginia State Po-

lice officer who arrested appellant. With these facts in mind, it may not be seriously argued that the car appellant was arrested in was not the same car as was removed, without the permission of the complainant, from the parking lot. Absent an explanation of his possession by appellant satisfactory to the jury, the law permits an inference that he not only had guilty knowledge that the vehicle was stolen but that he was actually the thief. Appellant attempted to explain his possession, obviously it was not a satisfactory explanation. The two cases appellant cites in support of his argument are readily distinguishable.

ARGUMENT

The identification of the stolen car was sufficient to sustain the conviction.

It is well settled that a court in ruling on a motion for judgment of acquittal must assume the truth of the Government's evidence and give the benefit of all legal inferences to be drawn therefrom. If the evidence, so viewed, admits either of an acquittal or a conviction, the decision must be left for the trier of the facts. *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F.2d 229 (1947), *cert. denied*, 331 U.S. 837; *Glasser v. United States*, 315 U.S. 60 (1942).

The evidence disclosed that the complainant Miss Kathleen Lucey on October 1, 1962 parked her 1961 Chevrolet Corvair with Ohio license tag number 19059C in the House Office Building parking lot at Second and C Streets, S.E. That evening the car was taken from the lot without her permission. Appellant had no permission to use the car. A companion of appellant, David L. Byrd, testified that on October 7, 1962 appellant took him for a ride in a white 1961 Chevrolet Corvair. Byrd assumed the car was appellant's.

Finally, Albert Christiansen, a Virginia State Police Officer, explained that he stopped appellant driving a 1961

Chevrolet Corvair with Maryland license tags. Shortly thereafter the officer found a set of Ohio license plates number 19059C inside the car, the same number that the complainant had previously testified were on her 1961 Chevrolet Corvair. As a result of talking to the Metropolitan Police Department Auto Squad, Officer Christiansen learned that the car was stolen.¹ This fact was verified later the same day by a teletype message received at the Fairfax police station.

With these facts in mind it may not be seriously argued, that the 1961 Chevrolet Corvair with Ohio license tag number 19059C which the complainant testified was taken from a parking lot without her permission and the 1961 Chevrolet Corvair with the same license plates found on the inside of the car, driven by appellant, was not one and the same car.

Appellant also urges that the Government failed to prove that the car he was arrested in was not in his lawful possession. We would only point out that the car that he was arrested in was adequately shown to be the complainant's car, and the complainant specifically, testified that she did not give appellant permission to use the car. The evidence showed that the stolen vehicle was taken from a parking lot on October 1, 1962, and that it was subsequently found in appellant's possession in Virginia on October 7, 1962. The case law is clear in this and other circuits that such possession permits an inference that appellant not only had guilty knowledge that the vehicle was stolen, but that he was actually the thief, absent an explanation of his possession satisfactory to the jury. *McAbee v. United States*, 111 U.S. App. D.C. 74,

¹ Appellant claims Officer Christiansen's testimony that T. J. Harrigan of the Metropolitan Police Department Auto Squad told him "that the car was stolen" was hearsay and the failure of the trial judge to exclude the evidence on his own motion was reversible error. Noticeably lacking is any authority for such a proposition. In this regard, suffice it to say that unobjected to hearsay evidence is accepted for its probative value. *Diaz v. United States*, 223 U.S. 442, 450 (1912); *Chew v. United States*, 112 U.S. App. D.C. 6, 298 F.2d 334 (1962).

77, 294 F.2d 703 (1961); *Bray v. United States*, 113 U.S. App. D. C. 136, 306 F.2d 743 (1962). *Inman v. United States*, 100 U.S. App. D.C. 150, 243 F.2d 256 (1957). The jury heard the evidence of both the Government and appellant. They resolved the conflict against appellant. This they are free to do.

Appellant cites *Cox v. United States*, 96 F.2d 41 (8th Cir. 1938) in support of his argument.² In *Cox* the evidence showed that an unidentified person stole a 1935 four-door Chevrolet sedan from one O. S. French, the motor and serial numbers were given. The evidence also showed that appellant sold to Carl V. Powell a 1935 Chevrolet four-door sedan under circumstances clearly indicating that the automobile was a stolen auto and that appellant knew that it was stolen. A forged bill of sale was given to Powell which described the automobile and gave the motor number and serial numbers, however, they were not the same motor and serial numbers as were on the car stolen from French. The court quite properly reasoned that if the forged bill of sale serial numbers were correct or to be believed, the car stolen from French was not the car sold to Powell. Alternatively if the serial and motor numbers on the forged bill of sale was not to be considered, the only identification of the car appellant sold was a 1935 four-door Chevrolet sedan and hence there would be no connection between the car stolen and the car sold. The instant case is quite different. The evidence quite clearly showed that the complainant's 1961 Chevrolet Corvair with Ohio license plates number 19059C was stolen from a parking lot and that appellant was found driving a 1961 Chevrolet Corvair with the identical Ohio license plates on the inside of the car. Unlike *Cox*, the car stolen and the car appellant was arrested in was properly identified.

² *Karn v. United States*, 158 F.2d 568 (9th Cir. 1946) also cited by appellant is inapposite. It deals with larceny of money in the amount of \$1217. The Court's decision turned on the complete lack of evidence connecting Karn with the larceny.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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